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ROOSEVELT JOHNSON

** Defendants' counsel listed after the caption*

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROOSEVELT JOHNSON,

Case No. C12-01772 EJD

Plaintiff,

Civil Rights

SAN ANTONIO INN, INC.; TEH YU INTERNATIONAL INVESTMENT, INC.; ROBERT CHU; and DOES 1-10, Inclusive.

**CONSENT DECREE AND
[PROPOSED] ORDER AS TO
INJUNCTIVE RELIEF ONLY**

Defendants.

ABDALAH LAW OFFICES
MIRIAM WEN-LEBRON, ESQ. (State Bar No. 191429)
10455 Torre Avenue
Cupertino, CA 95014
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Attorneys for Defendants

SAN ANTONIO INN, INC.;
TEH YU INTERNATIONAL
INVESTMENT, INC.; and ROBERT CHU

1. Plaintiff ROOSEVELT JOHNSON filed a Complaint in this action on April 10, 2012 to obtain recovery of damages for his discriminatory experiences,

**CONSENT DECREE & ORDER
AS TO INJUNCTIVE RELIEF ONLY
Case No. C12-1722 EJD**

1 denial of access, and denial of his civil rights, and to enforce provisions of the
2 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and
3 California civil rights laws against Defendants SAN ANTONIO INN, INC.; TEH
4 YU INTERNATIONAL INVESTMENT, INC.; and ROBERT CHU (all
5 defendants sometimes referred to as "Defendants"), relating to the condition of
6 Defendants' public accommodations as of November 12, 2011, and continuing.
7 Plaintiff has alleged that Defendants violated Title III of the ADA and sections 51,
8 52, 54, 54.1, 54.3, and 55 of the California Civil Code, and sections 19955 *et seq.*
9 of the California Health & Safety Code by failing to provide full and equal access
10 to their facilities at 2650 W. El Camino Real, Mountain View, California
11 (sometimes "Subject Premises").

12 2. Plaintiff and Defendants (together sometimes the "Parties") hereby
13 enter into this Consent Decree and Order for the purpose of resolving injunctive
14 relief aspects of this lawsuit without the need for protracted litigation. By entering
15 into this Consent Decree, Defendants deny all liability for any and all claims
16 brought forth in Plaintiff's Complaint, and this Consent Decree should not be
17 construed as an admission of liability. Issues of damages and attorneys' fees,
18 costs, and expenses will be the subject of further negotiations and litigation if
19 necessary.

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- 2 -

23 CONSENT DECREE & ORDER
24 AS TO INJUNCTIVE RELIEF ONLY

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1 **JURISDICTION:**

2 3. The Parties to this Consent Decree and Order agree that the Court has
3 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations
4 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*
5 and pursuant to supplemental jurisdiction for alleged violations of California
6 Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of
7 Regulations; and California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.

8 4. In order to avoid the costs, expense, and uncertainty of protracted
9 litigation, the Parties to this Consent Decree and Order agree to entry of this
10 Consent Decree and Order to resolve all claims regarding injunctive relief raised in
11 the Complaint filed with this Court. Accordingly, the Parties agree to the entry of
12 this Order without trial or further adjudication of any issues of fact or law
13 concerning Plaintiffs' claims for injunctive relief.

14 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate
15 to the Court's entry of this Consent Decree and Order, which provide as follows:
16

17 **SETTLEMENT OF INJUNCTIVE RELIEF:**

18 5. This Order shall be a full, complete, and final disposition and
19 settlement of Plaintiff's injunctive relief claims against Defendants that have arisen
20 out of the subject Complaint.

1 6. Subject to the terms and conditions set forth below, the Parties agree
2 and stipulate that the corrective work will be performed in compliance with the
3 standards and specifications for disabled access as set forth in the California Code
4 of Regulations, Title 24-2, and Americans with Disabilities Act Accessibility
5 Guidelines, unless other standards are specifically agreed to in this Consent Decree
6 and Order.

7
8 a) **Closing of Subject Premises:** Defendants represent that they
9 will close the Subject Premises to the public on or before October 31, 2012.

10
11 b) **Remedial Measures:** Defendants agree to complete the
12 following work to create disabled access at the Subject Premises: (1) create one
13 van-accessible handicapped parking stall in the area depicted in photographs A4
14 and A6 of the draft report of Plaintiff's access consultant, Jonathan Adler, attached
15 to and incorporated with this Consent Decree as **Attachment A**, insuring that the
16 stall is adjacent to the path of travel to the check-in/lobby of the Subject Premises ;
17 (2) put up signage in the check-in/lobby of the Subject Premises that specifically
18 indicates that the hotel is not accessible to patrons with disabilities; (3) remove the
19 device from the "push-side" of the door, as described in Item No. B1 in
20
21 **Attachment A**; and (3) replace the thumb latch hardware with lever-style
22 hardware or equivalent as described in Item No. B2 in **Attachment A**.

c) Additional Remedial Measures in the Event of Non-

2 **Closure:** In the event that Defendants continue to operate the Subject Premises as
3 a public accommodation after October 31, 2012, Defendants agree to complete all
4 of the corrective work described and set forth in **Attachment A**. Defendants agree
5 to undertake all of the respective remedial work as set forth therein and complete
6 all work by November 1, 2012. Defendants also agree to pay a penalty of \$1,000
7 for each day after October 31, 2012 that they operate the Subject Premises as a
8 public accommodation.
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d) Future Sale of Subject Premises: Defendants agree to provide

13 all potential purchasers of the Subject Premises (i.e. any individual or entity who
14 has made an offer, verbally or in writing, to purchase the Subject Premises) with a
15 copy of Mr. Adler's report that is **Attachment A** to this Consent Decree.

7 Defendants also agree to advise all potential purchasers of the Subject Premises
8 that any subsequent owner who continues to operate the Subject Premises as a
9 public accommodation with its current buildings and configuration, will be added
0 as a defendant in this action.

DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND COSTS:

7. The Parties have not reached any agreement regarding Plaintiffs' claims for damages, attorneys' fees, litigation expenses, and costs. These matters

1 will be the subject of future negotiation or litigation as necessary. The Parties
2 jointly stipulate and request that the Court not dismiss the case in its entirety as
3 these issues remain unresolved.

6 **ENTIRE CONSENT DECREE AND ORDER:**

7 8. This Consent Decree and Order and **Attachment A** constitute the
8 entire agreement between the signing Parties and no other statement, promise, or
9 agreement, either written or oral, made by any of the Parties or agents of any of the
10 Parties that is not contained in this written Consent Decree and Order, shall be
11 enforceable regarding the matters described herein.
12

14
15 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
16 **SUCCESSORS IN INTEREST:**

17 9. This Consent Decree and Order shall be binding on Plaintiffs,
18 Defendants, and any successors-in-interest. Defendants have a duty to so notify all
19 such successors-in-interest of the existence and terms of this Consent Decree and
20 Order during the period of the Court's jurisdiction of this Consent Decree and
21 Order.
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1 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS
2 TO INJUNCTIVE RELIEF ONLY:**

3 10. Each of the Parties to this Consent Decree and Order understands and
4 agrees that there is a risk and possibility that, subsequent to the execution of this
5 Consent Decree and Order, any or all of them will incur, suffer, or experience
6 some further loss or damage with respect to the lawsuit that is unknown or
7 unanticipated at the time this Consent Decree and Order is signed. Except for all
8 obligations required in this Consent Decree and Order, the Parties intend that this
9 Consent Decree and Order apply to all such further loss with respect to the lawsuit,
10 except those caused by the Parties subsequent to the execution of this Consent
11 Decree and Order. Therefore, except for all obligations required in this Consent
12 Decree and Order, this Consent Decree and Order shall apply to and cover any and
13 all claims, demands, actions, and causes of action by the Parties to this Consent
14 Decree with respect to the lawsuit, whether the same are known, unknown, or
15 hereafter discovered or ascertained, and the provisions of Section 1542 of the
16 California Civil Code are hereby expressly waived. Section 1542 provides as
17 follows:
18

19 **A GENERAL RELEASE DOES NOT EXTEND TO
20 CLAIMS WHICH THE CREDITOR DOES NOT
21 KNOW OR SUSPECT TO EXIST IN HIS OR HER
22 FAVOR AT THE TIME OF EXECUTING THE
23 RELEASE, WHICH IF KNOWN BY HIM OR HER
24 MUST HAVE MATERIALLY AFFECTED HIS
25 SETTLEMENT WITH THE DEBTOR.**

1 This waiver applies to the injunctive relief aspects of this action only and does not
2 include resolution of Plaintiff's claims for damages, attorneys' fees, litigation
3 expenses, and costs.
4

5 11. Except for all obligations required in this Consent Decree and Order –
6 and exclusive of the referenced continuing claims for damages, attorneys' fees,
7 litigation expenses, and costs – each of the Parties to this Consent Decree and
8 Order, on behalf of each, their respective agents, representatives, predecessors,
9 successors, heirs, partners, and assigns, releases and forever discharges each other
10 Party and all officers, directors, shareholders, subsidiaries, joint venturers,
11 stockholders, partners, parent companies, employees, agents, attorneys, insurance
12 carriers, heirs, predecessors, and representatives of each other Party, from all
13 claims, demands, actions, and causes of action of whatever kind or nature,
14 presently known or unknown, arising out of or in any way connected with the
15 lawsuit. Notwithstanding the foregoing, the Defendants do not waive or release,
16 but instead explicitly preserve, their rights to seek contribution, apportionment,
17 indemnification, and all other appropriate relief from each other in connection with
18 this Lawsuit and settlement thereof.
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25 **TERM OF THE CONSENT DECREE AND ORDER:**
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1 12. This Consent Decree and Order shall be in full force and effect -- and
2 the Court shall retain jurisdiction of this action to enforce provisions of this
3 Consent Decree and Order -- for a period of eighteen (18) months after the date of
4 entry of this Consent Decree and Order by the Court, or until the injunctive relief
5 contemplated by this Order is completed, whichever occurs later.
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9 **SEVERABILITY:**

10 13. If any term of this Consent Decree and Order is determined by any
11 court to be unenforceable, the other terms of this Consent Decree and Order shall
12 nonetheless remain in full force and effect.
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15 **SIGNATORIES BIND PARTIES:**
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17 14. Signatories on the behalf of the Parties represent that they are
18 authorized to bind the Parties to this Consent Decree and Order. This Consent
19 Decree and Order may be signed in counterparts and a facsimile signature shall
20 have the same force and effect as an original signature.
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23

24 **END OF PAGE.**
25 **SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT**
26 **THE END OF THE DOCUMENT.**
27
28

1 Dated: 9/13, 2012

PLAINTIFF ROOSEVELT JOHNSON

2 ROOSEVELT JOHNSON

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5 DATED: 9/27, 2012
6 DEFENDANT SAN ANTONIO INN, INC.
7 A FICTITIOUS BUSINESS NAME OF
8 TEH YU INTERNATIONAL INVESTMENT, INC.

By:

Print name: Shao Han Chu

Title: PRESIDENT, TEH YU INTERNATIONAL
INVESTMENT, INC.

9
10 Dated: 9/27, 2012
11 DEFENDANT TEH YU INTERNATIONAL
12 INVESTMENT, INC.

13 By:

Print name: Shao Han Chu

Title: PRESIDENT, TEH YU INTERNATIONAL
INVESTMENT, INC.

17 Dated: 9/27, 2012
18 DEFENDANT ROBERT CHU

19 ROBERT CHU

20 (SHAO HAN CHU)

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1 APPROVED AS TO FORM:

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3 DATED: 9/19, 2012

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LAW OFFICES OF PAUL L. REIN

By: Catherine Cabalo, Esq.
Attorneys for Plaintiff
ROOSEVELT JOHNSON

DATED: 10/02, 2012

ABDALAH LAW OFFICES

By: Miriam Wen-Lebron, Esq.
Attorneys for Defendants
SAN ANTONIO INN, INC.; TEH YU
INTERNATIONAL INVESTMENT, INC.; and
ROBERT CHU

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ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: 2/5, 2012

Edgar Dark

Honorable Edward J. Davila
United States District Judge